

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tiffany Dempsey	Team: Team # 1	CCRB Case #: 201403369	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/02/2014 4:00 PM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 10/2/2015	EO SOL 10/2/2015	
Date/Time CV Reported Wed, 04/09/2014 12:10 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 04/09/2014 12:10 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Ernest Kenner	08756	919237	073 PCT
2. SGT Christophe Muller	04155	925795	073 PCT
3. POM Thaddeus Grandstaff	15264	951784	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Peter Lazare	26342	948374	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christophe Muller	Abuse: Sgt. Christopher Muller entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM Ernest Kenner	Abuse: PO Ernest Kenner frisked § 87(2)(b)	§ 87(2)(b)
C.POM Ernest Kenner	Abuse: PO Ernest Kenner searched § 87(2)(b)	§ 87(2)(b)
D.POM Thaddeus Grandstaff	Abuse: PO Thaddeus Grandstaff searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
E.POM Ernest Kenner	Abuse: PO Ernest Kenner searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On April 2, 2014, at approximately 4:00 p.m., Sgt. Christopher Muller, PO Peter Lazare, PO Thaddeus Grandstaff, and PO Ernest Kenner of the 73rd Precinct conducted a home visit at § 87(2)(b) located within the § 87(2)(b) NYCHA complex to speak with § 87(2)(b) about a crime that occurred the night prior at an unrelated location involving § 87(2)(b). Under the supervision of Sgt. Muller, the officers entered the apartment after § 87(2)(b) opened the door, and allegedly refused to leave once § 87(2)(b) requested them to do so (**Allegation A**). § 87(2)(b) who was also inside the apartment, was allegedly frisked and searched by PO Kenner (**Allegations B and C**). § 87(2)(b) alleged that PO Grandstaff and PO Kenner searched the apartment (**Allegations D and E**). Neither § 87(2)(b) nor § 87(2)(b) were arrested or received summonses in regards to this incident (complaint encl. C1-2; § 87(2)(b)'s CCRB statement encl. C3-10; § 87(2)(b)'s follow-up phone statement encl. C13; § 87(2)(b)'s phone statement encl. C16-17). § 87(4-b), § 87(2)(g)

Mediation, Civil and Criminal History

On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the City of New York (encl. C11-12), and on § 87(2)(b) § 87(2)(b) filed a separate Notice of Claim with the City of New York (encl. C14-15), each claiming that PO Lazare and other members of the NYPD subjected them to false arrest, an illegal search, negligent and/or intentional emotional distress, negligent hiring/training/retention, and a violation of their Civil Rights, and that PO Lazare falsely detained them. They are both seeking one million dollars. Because of these ongoing claims, this case is ineligible for mediation. § 87(2)(b)

Civilian and Officer Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. B6), and § 87(2)(b) has never filed a CCRB complaint before (encl. B7).
- Sgt. Muller has been a member of service for 14 years. There are five substantiated allegations against him; three substantiated allegations in which he did not receive any discipline from the police department for conducting a question/stop, and a search, and refusing to provide his name and/or shield number in case #200611570, and two in which he did not receive any discipline from the police department as of yet for conducting a vehicle search and entering/searching a premise in case #201300228 (encl. B1-2).
- PO Grandstaff has been a member of service for three years and has no substantiated allegations against him (encl. B3).
- PO Kenner has been a member of service for 17 years and there are no substantiated allegations against him (encl.4-5).

Potential Issues

Video footage provided by § 87(2)(b) begins at the end of the incident, and does not capture the alleged evoked entry, the alleged frisk and search, or the search of the apartment (encl. C19-20).

Finding and Recommendations

Explanation of Subject Officer Identification

Sgt. Muller confirmed interacting with § 87(2)(b) at the door of his apartment and entering his apartment first. Also, he was the highest ranking officer present at the incident, and the supervisor on scene; § 87(2)(g)

Although, the officer whom § 87(2)(b) an uncooperative victim, alleged frisked and searched him was identified by investigation to be PO Grandstaff, and § 87(2)(b) identified PO Lazare by name and physical description as the officer who allegedly frisked § 87(2)(b). PO Kenner confirmed frisking § 87(2)(b).

§ 87(2)(b) and interacting with him in the apartment hallway. § 87(2)(g)

PO Grandstaff confirmed conducting a protective sweep of the apartment which excluded a search of the closets; § 87(2)(g) PO Kenner also confirmed conducting a protective sweep of the apartment which included looking inside one of the bedroom closets. Also, he failed to prepare a memo book entry for this incident. § 87(2)(g)

Recommendations

Allegations A- Sgt. Christopher Muller entered § 87(2)(b) in Brooklyn.

According to § 87(2)(b) after hearing a knock on the door, he opened the apartment door slightly and walked away because he believed his friend was on the other side of the door; he did not know officers were behind the door. When he turned around and saw Sgt. Muller and the other officers entering the apartment, he yelled for them to get out of the apartment about ten times; however, they did not. § 87(2)(b) did not attempt to close the apartment door as they were entering. PO Lazare allegedly told § 87(2)(b) that he believed § 87(2)(b) wanted them to enter since he had opened the door. Sgt. Muller then told § 87(2)(b) to sit at the dinner table located in the living room. He complied and the officers spoke with him about an incident that occurred the night prior. § 87(2)(b) told the officers he knew they were not supposed to be in the apartment because they did not have a warrant. § 87(2)(b) yelled for help and then asked the officers to leave again (encl. C3-10).

§ 87(2)(b) who provided a phone statement, but refused to participate any further and is considered uncooperative with this investigation, alleged that while in the bathroom he heard § 87(2)(b) telling an officer that that if they needed to speak with him, they could do so in the hallway of the apartment building because they did not have a warrant. The officer replied that § 87(2)(b) let them into the apartment, and § 87(2)(b) clarified that he did not let the officers into his apartment; and stated that he opened his door after he heard knocking and they barged in. § 87(2)(b) then asked the officers what they were doing in his apartment. At the time, § 87(2)(b) did not know § 87(2)(b) was speaking to a police officer (C16-17). § 87(2)(b) § 87(2)(b)'s girlfriend who was also inside the apartment, was uncooperative with the investigation and did not provide a statement (encl. C18).

Sgt. Muller testified that after officers knocked on the door and identified themselves as police, § 87(2)(b) opened the door, and they asked if they could enter the apartment. § 87(2)(b) did not respond verbally; however, he stepped back into the apartment, away from the door, and out of the officers' path. Sgt. Muller interpreted this action as non-verbal permission for the officers to enter. § 87(2)(b) did not show any resistance and did not instruct the officers to leave the apartment at this time. Sgt. Muller entered first and the rest of the officers followed. Once they entered, § 87(2)(b) walked further into the apartment, and the officers followed. Toward the end of the incident, § 87(2)(b) yelled for help and instructed the officers to leave, after § 87(2)(b) had already begun recording the incident on her cell phone. The officers then made their way out of the apartment, and as they were already exiting § 87(2)(b) told them to leave twice or thrice more (encl. D9-11).

PO Grandstaff confirmed that § 87(2)(b) backed away from the door, once it was opened, and interpreted this to mean that § 87(2)(b) was inviting them in. § 87(2)(b) did not ask the officers to leave (D15-17). PO Lazare stated that § 87(2)(b) opened the door, and an officer asked if they could come inside. § 87(2)(b) stated, "No problem," and the officers entered. He did not show any resistance. PO Lazare did not recall if § 87(2)(b) asked the officers to leave (encl. D3-5). PO Kenner testified that after § 87(2)(b) came to the door, Sgt. Muller held his shield to the peep hole, and § 87(2)(b) opened the door completely. Sgt. Muller asked if they could go inside to speak, and § 87(2)(b) said

they could and stepped to the side of the door. All the officers then entered. § 87(2)(b) showed no resistance. § 87(2)(b) did not ask the officers to leave (encl. D20-22).

Video footage portrays the last 48 seconds of the incident in which § 87(2)(b) yells for help and Sgt. Muller tells § 87(2)(b) to watch where and with whom he gets into arguments, and provides § 87(2)(b) with his name when it is requested. § 87(2)(b) is not captured asking the officers to leave the apartment (encl. C19-20).

§ 87(2)(b) admitted to opening the door and walking away from it; however, after he realized the individuals behind the door were officers, he allegedly instructed them to leave. The officers, however, testified that they identified themselves as police prior to § 87(2)(b) opening the door, and that § 87(2)(b) provided them with either nonverbal consent, verbal consent or both to enter the apartment, did not show any resistance to them entering, and were not asked to leave while initially gaining entry. Only Sgt. Muller confirmed that § 87(2)(b) asked the officers to leave at the end of the incident, as § 87(2)(b) alleged as well, and that the officers left when instructed to do so. However, § 87(2)(b) was not captured on the video footage asking the officers to leave.

§ 87(2)(g)

Allegation B- PO Ernest Kenner frisked § 87(2)(b)

Allegation C- PO Ernest Kenner searched § 87(2)(b)

§ 87(2)(b) who refused to be interviewed at the CCRB (encl. C18), stated in his phone statement that once he exited the bathroom and entered the hallway, he heard § 87(2)(b) tell officers that § 87(2)(b) was in the back of the apartment. As § 87(2)(b) was walking down the hallway, he saw four police officers standing at the end of the hallway, near the living room. PO Grandstaff instructed § 87(2)(b) to stop and not to move. PO Grandstaff walked to § 87(2)(b) in the hallway, and frisked him from his torso to his legs, including his pants pockets, and swiped his finger inside of his shoes. § 87(2)(b) walked into the living room, by himself, where PO Lazare, PO Kenner and Sgt. Muller remained. PO Grandstaff and PO Kenner then walked down the hallway, and PO Lazare and Sgt. Muller remained in the living room with § 87(2)(b) and § 87(2)(b) who were at the dinner table (encl. C16-17).

According to § 87(2)(b) after he lied to the officers, stating that no other individuals were in the apartment, a loud bang was heard in the back of the apartment. § 87(2)(b) lied again, stating that his cat caused the noise because he believed § 87(2)(b) was hiding, but then admitted § 87(2)(b) was present. PO Grandstaff and PO Kenner walked down the hallway, and soon after, § 87(2)(b) walked from the hallway to the living room by himself. Once in the living room, § 87(2)(b) observed PO Lazare allegedly frisk § 87(2)(b) while PO Grandstaff and PO Kenner were still in the back of the apartment. PO Lazare did not search § 87(2)(b) (encl. C3-10). § 87(2)(b) was uncooperative with the investigation and did not provide a statement (encl. C18).

PO Kenner testified that after § 87(2)(b) lied to the officers twice about § 87(2)(b) being inside the apartment, and a loud noise was heard, PO Kenner and PO Grandstaff walked to the hallway. PO Kenner yelled, asking if anyone was in the back of the apartment, but no one replied. PO Kenner then instructed whoever was in the back of the apartment to come out. § 87(2)(b) then walked around the corner and down the hallway. PO Kenner walked to him, asked for § 87(2)(b)'s identification, and then frisked § 87(2)(b) in areas where weapons could be secreted because he suspected § 87(2)(b) possessed a firearm.

due to the fact that § 87(2)(b) did not respond to the officers when they asked if anyone was in the back of the apartment after they had heard the loud noise, § 87(2)(b) initially lied about § 87(2)(b) being present, § 87(2)(b) was in a gang member's apartment in which they were present investigating a prior shooting, and the apartment building was a known gang location. PO Kenner did not feel a weapon, and did not search § 87(2)(b) or see any other officer do so. PO Kenner and PO Grandstaff walked § 87(2)(b) to the living room, and then walked back down the hallway to check if any other individuals were present (encl. D20-22).

PO Lazare testified that he did not recall frisking and searching § 87(2)(b) or seeing any other officer do so (encl. D3-5). PO Grandstaff testified that once he heard a loud bang in the apartment, § 87(2)(b) walked down the hallway into the living room and sat on the couch. He did not interact with § 87(2)(b) and did not frisk or search him. He did not recall seeing any other officer frisk § 87(2)(b) and did not see any officer search him. (encl. D15-17). Sgt. Muller did not see any officer frisk or search § 87(2)(b) (encl. D9-11).

§ 87(2)(g)

§ 87(2)(g)

Allegation D- PO Thaddeus Grandstaff searched § 87(2)(b) in Brooklyn.

Allegation E- PO Ernest Kenner searched § 87(2)(b) in Brooklyn.

It is undisputed that after § 87(2)(b) a known gang member who lived in an apartment complex known as a gang location and was speaking to officers regarding a prior shooting, had already told officers that no other individuals besides himself and § 87(2)(b) were present in the apartment, a loud bang was heard in the back of the apartment, and § 87(2)(b) who believed § 87(2)(b) was attempting to hide, lied and told the officers that a cat caused the noise. After lying the second time, § 87(2)(b) admitted to the officers that § 87(2)(b) was in the back of the apartment. § 87(2)(b) then walked down the apartment hallway, toward the officers, and entered the living room. PO Kenner and PO Grandstaff walked down the hallway and entered the back of the apartment to check if any other individuals were present.

According to § 87(2)(b) once PO Kenner and PO Grandstaff entered the back of the apartment, he heard his bedroom closet, which makes a loud squeaking noise when opened, being opened (encl. C3-10). § 87(2)(b) also heard the closet door being opened (encl. C16-17). After the officers left, § 87(2)(b) walked into his bedroom and noticed that his closet door was opened and a small bag of hats, which had

been on the top shelf of his bedroom closet prior to the officers' visit, was now located on his dresser (encl. C3-10).

PO Grandstaff testified that he walked to the back of the apartment and conducted a protective sweep, checking areas in which individuals would be able to hide, to determine if any other individuals were inside the apartment. Initially PO Grandstaff stated that he remained in the hallway, opened all the doors and looked inside the rooms; however, he later stated that he entered two bedrooms completely, and looked underneath the beds in each of the two rooms to see if anyone was hiding underneath them. He did not look anywhere else inside these bedrooms. Once no other individuals were found, PO Kenner and PO Grandstaff made their way to the front of the apartment (encl. D15-17).

PO Kenner testified that he and PO Grandstaff walked down the hallway and entered the bathroom and two bedrooms to check if any other individuals were present. PO Kenner looked behind the doors, underneath beds, and inside one bedroom closet. PO Kenner did not remove a bag from a shelf in the closet. He did not place a bag from the closet onto a dresser (encl. D20-22). PO Grandstaff did not see PO Kenner enter any bedroom or closets (encl. D15-17).

A protective sweep may be performed incident to a consent entry provided that there are articulable facts which taken together with the rational inferences from those facts would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the scene. A protective sweep only authorizes a cursory inspection of those areas where a person may be found (People v. William White, 687 N.Y.S.2d 329, 259 A.D.2d 400 (1999); People v. Jose Rodriguez, 239 N.Y.L.J. 10 (2007); USA v. Judith P. Fadul et al., 16 F. Supp. 3d270 (U.S. Dist. 2014)) (encl. A1-21). Additionally, a protective sweep may be conducted if, while officers are already inside the apartment conducting the arrest of an individual or executing an arrest warrant for that individual, officers observe a second individual run or disappear into a room within the apartment (People v. Jose Garcia, 815 N.Y.S.2d 25, 25 A.D.3d 307 (2006); People v. Johnathan McAllister, 826 N.Y.S.2d 71, 35 A.D.3d 300 (2006) (encl. A22-24).

§ 87(2)(g)

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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
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